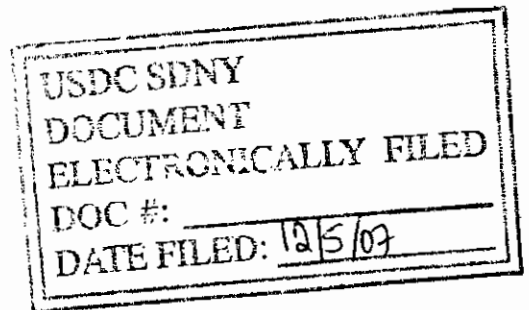


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
EVART ENTERPRISES, INC.,

Plaintiff,

-v-

GENTLEMEN'S VIDEO, INC., MICHAEL
ESPOSITO, individually and in his
corporate capacity, and SCOTT ESPOSITO,
individually and in his corporate
capacity,

Defendants.
-----X

07 Civ. 5441 (DLC)
(DFE)

ORDER

DENISE COTE, District Judge:

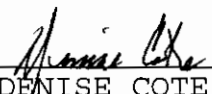
On November 14, 2006 the plaintiff in this action filed action number 06 Civ. 13207(DLC)(DFE) ("prior action") against the defendants and others. The prior action was closed pursuant to a Settlement Agreement and a Consent Order and Permanent Injunction, filed on February 13, 2007. The plaintiff filed the present action on June 7, alleging that the defendants infringed their copyrights both before and after the date of the Settlement Agreement and Consent Order and Permanent Injunction. On July 27, the defendants filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The plaintiff filed an Amended Complaint on August 24, and the motion to dismiss the original Complaint was denied as moot by an Order of September 11.

On October 12, the defendants filed a motion to dismiss or stay the present action. In support of this motion, they argue that the Court has jurisdiction to entertain the plaintiff's claims as violations of the Consent Order and Permanent Injunction in the prior action. The motion and supporting memorandum do not argue that the plaintiff's pleading is insufficient or that the Complaint should be dismissed on any of the other grounds listed in the Federal Rules of Civil Procedure. They do not address the five factors that must be weighed in considering whether to stay civil proceedings, see Russian Standard Vodka (USA), Inc. v. Allied Domecq Spirits & Wine USA, --- F.Supp.2d ----, No. 06 Civ. 9915 (RLC), 2007 WL 4145277, at *7 (S.D.N.Y. Nov. 20, 2007), and those factors do not support staying the instant litigation. It is hereby

ORDERED that the defendants' motion to dismiss the plaintiff's Complaint or to stay the action is denied.

SO ORDERED:

Dated: New York, New York
December 4, 2007



DENISE COTE
United States District Judge